

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

Miguelangel Alvarez Gutierrez,

Plaintiff,

v.

Kilolo Kijakazi¹, Commissioner of Social
 Security,

Defendant.

Case No. 2:21-cv-01292-DJA

Order

Before the Court is Plaintiff Miguelangel Alvarez Gutierrez's motion for reversal or remand (ECF No. 20) and the Commissioner's cross motion to affirm (ECF No. 21) and response (ECF No. 22). Plaintiff filed a reply. (ECF No. 23). Because the Court finds that the ALJ's RFC is not supported by substantial evidence and the ALJ did not give clear and convincing reasons for rejecting Plaintiff's subjective testimony, the Court grants Plaintiff's motion to remand (ECF No. 15) and denies the Commissioner's cross motion to affirm (ECF No. 16). The Court finds these matters properly resolved without a hearing. LR 78-1.

I. Background.

A. Procedural history.

Plaintiff filed an application for a period of disability and disability insurance benefits on June 14, 2018, alleging an onset of disability commencing May 17, 2018. (ECF No. 20 at 3). The Commissioner denied his claim and Plaintiff requested a hearing by an Administrative Law Judge. (*Id.*). The ALJ issued an unfavorable decision on October 29, 2020. (*Id.*). Plaintiff requested review by the Appeals Council, which request the Appeals Council denied on May 20, 2021, making the ALJ's decision the final agency decision. (*Id.*).

¹ Kilolo Kijakazi is now the Commissioner of Social Security and substituted as a party.

1 **B. *The ALJ decision.***

2 The ALJ followed the five-step sequential evaluation process set forth in 20 C.F.R.
3 §§ 404.1520, 416.920. (AR 69-78). At step one, the ALJ found that Plaintiff had not engaged in
4 substantial gainful activity since May 17, 2018. (AR 70). At step two, the ALJ found that
5 Plaintiff has the following severe impairments: degenerative disc disease of the cervical spine,
6 degenerative disc disease of the lumbar spine, and gastritis. (AR 70). At step three, the ALJ
7 found that the Plaintiff's impairments or combination of impairments did not meet or medically
8 equal the severity of one of the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1.
9 (AR 72). In making this finding, the ALJ considered Listings 1.04, 1.04A, 1.04B, 12.04, and
10 12.06. (AR 72-73).

11 At step four, the ALJ found that Plaintiff has a residual functional capacity to perform
12 light work as defined in 20 C.F.R. 404.1567(b) subject to limitations. (AR 45). Those limitations
13 include that:

14 [H]e can lift and/or carry 20 pounds occasionally and 10 pounds
15 frequently. He can stand and/or walk 6 hours in an 8-hour workday.
16 He can sit 6 hours in an 8-hour workday. He can occasionally climb
17 ladders, ropes or scaffolds. He can frequently climb ramps or stairs,
18 balance, kneel, stoop, crouch and crawl. He must avoid unprotected
19 heights and dangerous moving machinery. He must avoid exposure
20 to loud noises.

21 (AR 73).

22 At step five, the ALJ found that Plaintiff was unable to perform past relevant work. (AR
23 77). However, the ALJ found Plaintiff capable of performing occupations such as electronic
24 worker; office helper; and baker, conveyor belt worker. (AR 78). Accordingly, the ALJ found
25 that Plaintiff had not been disabled from May 17, 2018. (AR 79).

26 **II. Standard.**

27 The court reviews administrative decisions in social security disability benefits cases
28 under 42 U.S.C. § 405(g). *See Akopyan v. Barnhard*, 296 F.3d 852, 854 (9th Cir. 2002). Section
405(g) states, “[a]ny individual, after any final decision of the Commissioner of Social Security
made after a hearing to which he was a party, irrespective of the amount in controversy, may

1 obtain a review of such decision by a civil action...brought in the district court of the United
 2 States for the judicial district in which the plaintiff resides.” The court may enter, “upon the
 3 pleadings and transcripts of the record, a judgment affirming, modifying, or reversing the
 4 decision of the Commissioner of Social Security, with or without remanding the case for a
 5 rehearing.” *Id.* The Ninth Circuit reviews a decision of a District Court affirming, modifying, or
 6 reversing a decision of the Commissioner *de novo*. *Batson v. Commissioner*, 359 F.3d 1190,
 7 1193 (9th Cir. 2003).

8 The Commissioner’s findings of fact are conclusive if supported by substantial evidence.
 9 *See* 42 U.S.C. § 405(g); *Ukolov v. Barnhart*, 420 F.3d 1002 (9th Cir. 2005). However, the
 10 Commissioner’s findings may be set aside if they are based on legal error or not supported by
 11 substantial evidence. *See Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d 1050, 1052 (9th Cir.
 12 2006); *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). The Ninth Circuit defines
 13 substantial evidence as “more than a mere scintilla but less than a preponderance; it is such
 14 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”
 15 *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995); *see also Bayliss v. Barnhart*, 427 F.3d
 16 1211, 1214 n.1 (9th Cir. 2005). In determining whether the Commissioner’s findings are
 17 supported by substantial evidence, the court “must review the administrative record as a whole,
 18 weighing both the evidence that supports and the evidence that detracts from the Commissioner’s
 19 conclusion.” *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998); *see also Smolen v. Chater*, 80
 20 F.3d 1273, 1279 (9th Cir. 1996). Under the substantial evidence test, findings must be upheld if
 21 supported by inferences reasonably drawn from the record. *Batson*, 359 F.3d at 1193. When the
 22 evidence will support more than one rational interpretation, the court must defer to the
 23 Commissioner’s interpretation. *See Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005); *Flatlen*
 24 *v. Sec’y of Health and Human Serv.*, 44 F.3d 1453, 1457 (9th Cir. 1995).

25 **III. Disability evaluation process.**

26 The individual seeking disability benefits has the initial burden of proving disability.
 27 *Roberts v. Shalala*, 66 F.3d 179, 182 (9th Cir 1995). To meet this burden, the individual must
 28 demonstrate the “inability to engage in any substantial gainful activity by reason of any medically

1 determinable physical or mental impairment which can be expected . . . to last for a continuous
2 period of not less than 12 months.” 42 U.S.C. § 423(d)(1)(A). More specifically, the individual
3 must provide “specific medical evidence” in support of his claim for disability. 20 C.F.R.
4 § 404.1514. If the individual establishes an inability to perform his prior work, then the burden
5 shifts to the Commissioner to show that the individual can perform other substantial gainful work
6 that exists in the national economy. *Reddick*, 157 F.3d at 721.

7 The ALJ follows a five-step sequential evaluation process in determining whether an
8 individual is disabled. *See* 20 C.F.R. § 404.1520; *Bowen v. Yuckert*, 482 U.S. 137, 140 (1987). If
9 at any step the ALJ determines that she can make a finding of disability or non-disability, a
10 determination will be made, and no further evaluation is required. *See* 20 C.F.R.
11 § 404.1520(a)(4); *Barnhart v. Thomas*, 540 U.S. 20, 24 (2003). Step one requires the ALJ to
12 determine whether the individual is engaged in substantial gainful activity (“SGA”). 20 C.F.R.
13 § 404.1520(b). SGA is defined as work activity that is both substantial and gainful; it involves
14 doing significant physical or mental activities usually for pay or profit. *Id.* § 404.1572(a)-(b). If
15 the individual is engaged in SGA, then a finding of not disabled is made. If the individual is not
16 engaged in SGA, then the analysis proceeds to step two.

17 Step two addresses whether the individual has a medically determinable impairment that
18 is severe or a combination of impairments that significantly limits him from performing basic
19 work activities. *Id.* § 404.1520(c). An impairment or combination of impairments is not severe
20 when medical and other evidence establishes only a slight abnormality or a combination of slight
21 abnormalities that would have no more than a minimal effect on the individual’s ability to work.
22 *Id.* § 404.1521; *see also* Social Security Rulings (“SSRs”) 85-28. If the individual does not have
23 a severe medically determinable impairment or combination of impairments, then a finding of not
24 disabled is made. If the individual has a severe medically determinable impairment or
25 combination of impairments, then the analysis proceeds to step three.

26 Step three requires the ALJ to determine whether the individual’s impairments or
27 combination of impairments meet or medically equal the criteria of an impairment listed in 20
28 C.F.R. Part 404, Subpart P, Appendix 1. 20 C.F.R. §§ 404.1520(d), 404.1525, and 404.1526. If

1 the individual's impairment or combination of impairments meet or equal the criteria of a listing
2 and the duration requirement (20 C.F.R. § 404.1509), then a finding of disabled is made. 20
3 C.F.R. § 404.1520(h). If the individual's impairment or combination of impairments does not
4 meet or equal the criteria of a listing or meet the duration requirement, then the analysis proceeds
5 to step four.

6 Before moving to step four, however, the ALJ must first determine the individual's RFC,
7 which is a function-by-function assessment of the individual's ability to do physical and mental
8 work-related activities on a sustained basis despite limitations from impairments. *See* 20 C.F.R.
9 § 404.1520(e); *see also* SSR 96-8p. In making this finding, the ALJ must consider all the
10 relevant evidence, such as all symptoms and the extent to which the symptoms can reasonably be
11 accepted as consistent with the objective medical evidence and other evidence. 20 C.F.R. §
12 404.1529; *see also* SSR 16-3p. To the extent that statements about the intensity, persistence, or
13 functionally limiting effects of pain or other symptoms are not substantiated by objective medical
14 evidence, the ALJ must evaluate the individual's statements based on a consideration of the entire
15 case record. The ALJ must also consider opinion evidence in accordance with the requirements
16 of 20 C.F.R. § 404.1527.

17 Step four requires the ALJ to determine whether the individual has the RFC to perform his
18 past relevant work ("PRW"). 20 C.F.R. § 404.1520(f). PRW means work performed either as the
19 individual actually performed it or as it is generally performed in the national economy within the
20 last fifteen years or fifteen years before the date that disability must be established. In addition,
21 the work must have lasted long enough for the individual to learn the job and performed at SGA.
22 20 C.F.R. §§ 404.1560(b) and 404.1565. If the individual has the RFC to perform his past work,
23 then a finding of not disabled is made. If the individual is unable to perform any PRW or does
24 not have any PRW, then the analysis proceeds to step five.

25 Step five requires the ALJ to determine whether the individual can do any other work
26 considering his RFC, age, education, and work experience. 20 C.F.R. § 404.1520(g). If he can
27 do other work, then a finding of not disabled is made. Although the individual generally
28 continues to have the burden of proving disability at this step, a limited burden of going forward

1 with the evidence shifts to the Commissioner. The Commissioner is responsible for providing
 2 evidence that demonstrates that other work exists in significant numbers in the national economy
 3 that the individual can do. *Yuckert*, 482 U.S. at 141-42

4 **IV. Analysis and findings.**

5 **A. *The ALJ's RFC is not supported by substantial evidence.***

6 Plaintiff argues that the ALJ's RFC is not supported by substantial evidence because the
 7 ALJ found the only two medical opinions of record unpersuasive. (ECF No. 20 at 5-7). Thus, no
 8 medical opinions supported the RFC and the ALJ interpreted raw medical data. (*Id.*). The
 9 Commissioner responds that the RFC is supported by substantial evidence because the ALJ need
 10 not adopt the limitations found in a medical opinion. (ECF No. 21 at 7-11). Instead, the
 11 Commissioner argues, the record was sufficient for the ALJ to assess Plaintiff's functional
 12 limitations without additional medical opinion evidence. (*Id.*). The Commissioner adds that the
 13 ALJ found even greater limitations than the reviewing physicians, making any error harmless.
 14 (*Id.*). Plaintiff replies that the objective and clinical findings on which the ALJ relied to create the
 15 RFC do not directly connect to the RFC the ALJ ultimately fashioned. (*Id.*).

16 The regulations provide that the ALJ must assess all the evidence, including the
 17 claimant's and others' descriptions of the limitations, and medical reports, to determine what
 18 capacity the claimant has for work despite his or her impairments. 20 C.F.R. § 404.1545(a)(3)
 19 and 416.945(a)(3). "The ALJ is responsible for translating and incorporating clinical findings
 20 into a succinct RFC." *Rounds v. Comm'r of Soc. Sec. Admin.* 807 F.3d 996, 1006 (9th Cir. 2015)
 21 (citing *Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1174 (9th Cir. 2008)). While the ALJ is
 22 responsible for determining the RFC, the RFC must be supported by substantial evidence. "The
 23 ALJ must set out in the record his reasoning and the evidentiary support for his interpretation of
 24 the medical evidence." *Tackett v. Apfel*, 180 F.3d 1094, 1102 (9th Cir. 1999) (citation omitted).
 25 Moreover, "the ALJ must use 'some medical evidence of the claimant's ability to function in the
 26 workplace' in order to make a proper RFC assessment; '[t]he ALJ may not simply draw his own
 27 inferences about [the claimant's] functional ability from medical reports.'" *Koch v. Kijakazi*, 4
 28 F.4th 656, 667 (8th Cir. 2021) (quoting *Combs v. Berryhill*, 878 F.3d 642, 646 (8th Cir. 2017),

1 and citing *Hutsell v. Massanari*, 259 F.3d 707, 712 (8th Cir. 2001)); *see also* POMS § DI
2 24510.001(A)(1) (“The RFC assessment[] is based primarily on medical evidence”).

3 Courts in other circuits have held that when an ALJ rejects the expert opinions in the
4 record and instead relies on his own judgment in determining a claimant’s RFC, the ALJ’s
5 decision is unsupported by substantial evidence. *See Rosado v. Sec’y of Health & Human Servs.*,
6 807 F.2d 292, 293 (1st Cir. 1986); *Jakubiak v. Berryhill*, 337 F.Supp.3d 80 (D. Mass.
7 2018); *Maniscalco v. Colvin*, 167 F.Supp.3d 207, 217-18 (D. Mass. Mar. 3, 2016); *Beyene v.*
8 *Astrue*, 739 F.Supp.2d 77, 83 (D. Mass. 2010). Generally, a lay person is not qualified to
9 interpret raw medical data to determine a claimant’s RFC unless the impairments are so mild that
10 they pose no significant functional limitations. *Manso-Pizarro v. Sec’y of Health & Human*
11 *Servs.*, 76 F.3d 15, 17 (1st Cir. 1996); *Rosado*, 807 F.2d at 293-94; *Jakubiak*, 337 F.Supp.3d at 85
12 (citation omitted); *Maniscalco*, 167 F.Supp.3d at 218-19; *Beyene*, 739 F.Supp.2d at 83 (citation
13 omitted).

14 The Court finds that the ALJ’s RFC is not supported by substantial evidence. While the
15 ALJ summarized the medical evidence, it is not entirely clear how the ALJ then translated that
16 evidence into an RFC. This is particularly concerning because the ALJ did not rely on a medical
17 opinion translating Plaintiff’s records into functional limitations. The two State agency medical
18 consultants—Drs. Barton and Blaskowski—did not find Plaintiff’s physical impairments to be
19 severe. (AR 77). But the ALJ did not explain why those opinions were otherwise inconsistent or
20 unsupported by the record. Instead, she explained only that “[n]ew and significant evidence
21 received at the hearing level shows the claimant is more limited than determined by Drs. Barton
22 and Blaskowski.” (AR 77). The ALJ did not provide more context for this statement, which
23 undermines the Commissioner’s argument that the evidence the State agency medical consultants
24 analyzed did “not significantly differ from later dated evidence” that the ALJ discussed.
25 *Compare* (AR 77) *with* (ECF No. 21 at 7). Because it is unclear how the ALJ derived Plaintiff’s
26 RFC from the record and because there are no medical opinions supporting the RFC, the ALJ
27 apparently relied only on the Plaintiff’s medical records and possibly testimony on assessing the
28 RFC. The Court thus finds that the ALJ’s RFC is not supported by substantial evidence.

1 While the Commissioner argues that the error is harmless, the Court disagrees. The
 2 Commissioner cites to *Lamas v. Saul* for the proposition that if “an ALJ erred in evaluating a
 3 claimant’s RFC without support from a medical opinion...such an error [is] harmless [if] the ALJ
 4 found more stringent limitations than any medical opinion.” (ECF No. 21 at 11) (citing *Lamas v.*
 5 *Saul*, No. 1:19-cv-00852-BAM, 2020 WL 6561306, at *9-10 (E.D. Cal. Nov. 9, 2020)). But here,
 6 the ALJ did not outline the two State agency medical consultants’ opinions, nor does it appear
 7 that they offered any. (AR 77, 462-70, 473-81). The Court is left without a baseline by which to
 8 evaluate the extent to which the ALJ’s RFC is more stringent. Without this baseline, it is difficult
 9 to determine the extent to which the error is harmful. However, the error is not harmless because
 10 the ALJ used the RFC to provide hypotheticals to the vocational expert, which the vocational
 11 expert then used to determine whether jobs existed in the national economy which Plaintiff could
 12 perform. (AR 123-25). The vocational expert also opined that, if an individual with the ALJ’s
 13 RFC had to miss two days of work per month, that individual could not sustain gainful work
 14 activity. (AR 125). The ALJ’s RFC is thus unsupported by substantial evidence, an error which
 15 is not harmless, and this case must be remanded to obtain further functional evidence.

16 ***B. The ALJ did not give clear and convincing reasons for discounting Plaintiff’s***
 17 ***subjective complaints.***

18 Plaintiff argues that the ALJ failed to give clear and convincing reasons for rejecting his
 19 subjective testimony. (ECF No. 20). Specifically, he argues that the ALJ erred by using the lack
 20 of objective evidence as the only rationale for rejecting Plaintiff’s subjective complaints of pain.
 21 (*Id.* at 9). Plaintiff testified that he experiences pain in his stomach, spine, neck, elbows, toes,
 22 tailbone, and fingers; experiences irritable bowel syndrome symptoms; and experiences rectal
 23 bleeding. (AR 110, 115). The Commissioner responds that the ALJ provided multiple reasons
 24 for discounting Plaintiff’s subjective testimony, including: (1) the objective medical evidence;
 25 (2) Plaintiff’s positive responses to his conservative treatment regimen; and (3) the
 26 inconsistencies between the prior administrative medical findings and Plaintiff’s symptoms.
 27 (ECF No 21 at 12). Plaintiff replies that the ALJ also erred by relying on Plaintiff’s
 28 “conservative” treatment without identifying more aggressive treatment options that would be

1 commensurate with Plaintiff’s symptom testimony. (ECF No. 23 at 5). Plaintiff adds that prior
2 administrative medical findings that are inconsistent with his testimony are not “clear and
3 convincing” reasons to reject his testimony because they are neither unrelated to the testimony
4 nor an internal contradiction within the testimony. (*Id.* at 6).²

5 The ALJ must engage in a two-step analysis when evaluating whether a claimant’s
6 testimony concerning pain, symptoms, and level of limitation is credible. *Garrison v. Colvin*, 759
7 F.3d 995, 1014 (9th Cir. 2014). First, “the ALJ must determine whether the claimant has
8 presented objective medical evidence of an underlying impairment which could reasonably be
9 expected to produce the pain or other symptoms alleged.” *Lingenfelter v. Astrue*, 504 F.3d 1028,
10 1036 (9th Cir. 2007) (internal quotations and citations omitted). Second, if there is no evidence
11 of malingering, “the ALJ can reject the claimant’s testimony concerning the severity of his
12 symptoms only by offering specific, clear and convincing reasons for doing so.” *Garrison*, 759
13 F.3d at 1014-15 (internal citation omitted).

14 Specifically, the ALJ must state why the testimony is unpersuasive and point to what
15 testimony or evidence undermines the claimant’s testimony. *See, e.g., Parra v. Astrue*, 481 F.3d
16 742, 750 (9th Cir. 2007) (upholding ALJ’s credibility determination when he pointed out
17 numerous lab results that contradicted his subjective complaints); *see also Robbins v. Social Sec.*
18 *Admin.*, 466 F.3d 880, 884-85 (9th Cir. 2006) (ALJ required to provide a “narrative discussion”
19 and state specific evidence in the record supporting an adverse credibility finding). The ALJ
20 “may not reject a claimant’s subjective complaints based solely on a lack of medical evidence to
21 fully corroborate the alleged severity of pain.” *Burch*, 400 F.3d at 680. This is because the lack
22 of an objective medical basis is just one factor in evaluating the credibility of a claimant’s

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25 ² Neither party addresses harmlessness in their arguments. The Court thus will not address the
26 issue. *See Frost v. Berryhill*, 727 F. App’x 291, 295 (9th Cir. 2018) (*citing Carmickle v. Comm’r*
27 *Soc. Sec. Admin.*, 533 F.3d 1155, 1161 n.2) (9th Cir. 2008)) (finding that summarizing medical
28 records without identifying an error was an “underdeveloped argument” the court need not
address); *Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 929–30 (9th Cir. 2003) (holding
that the court cannot “manufacture arguments for appellant” and will review only “issues which
are argued specifically and distinctly”).

1 testimony and complaints. *See Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991) (en banc).
 2 Moreover, the Court notes that SSR 16-3p clarified that the ALJ no longer must make credibility
 3 findings, but rather, evaluate the extent to which the alleged functional limitations and restrictions
 4 due to pain and other symptoms are consistent with the other evidence. If “evidence can support
 5 either affirming or reversing the ALJ’s decision,” the Court may not substitute its judgment for
 6 that of the ALJ’s. *Robbins*, 466 F.3d at 882.

7 Here, the ALJ did not give clear and convincing reasons for rejecting Plaintiff’s subjective
 8 complaints of pain. While the ALJ gave clear and convincing reasons for rejecting Plaintiff’s
 9 subjective complaints of pain by relying on Plaintiff’s objective medical evidence, objective
 10 medical evidence is not enough on its own to discredit Plaintiff’s claims of excess pain. Rather,
 11 objective medical evidence is just one factor in evaluating the credibility of a claimant’s
 12 testimony and complaints. But the ALJ’s other factors—Plaintiff’s treatment and the opinions of
 13 Drs. Barton and Blaskowski—do not constitute clear and convincing reasons for rejecting
 14 Plaintiff’s subjective complaints.

15 The ALJ did not provide clear and convincing reasons for rejecting Plaintiff’s complaints
 16 of pain by relying on his treatment. While the ALJ described Plaintiff’s treatment, the ALJ did
 17 not explain why it was conservative. Instead, regarding Plaintiff’s complaints of abdominal pain,
 18 the ALJ explained that Plaintiff was prescribed at least four types of medication after three
 19 emergency room visits for rectal bleeding and abdominal pain in 2018. (AR 75). The ALJ also
 20 explained that Plaintiff had gallbladder removal surgery³ and hiatal hernia repair⁴ in 2019 without
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22 ³ The gallbladder collects and stores bile, a digestive fluid produced in the liver. *See*
 23 *Cholecystectomy (gallbladder removal)*, MAYO CLINIC, [https://www.mayoclinic.org/tests-](https://www.mayoclinic.org/tests-procedures/cholecystectomy/about/pac-20384818#:~:text=A%20cholecystectomy%20(koh%2Dlulh%2D,fluid%20produced%20in%20yo ur%20liver.(last%20visited%20April%206,%202022).)
 24 [procedures/cholecystectomy/about/pac-](https://www.mayoclinic.org/tests-procedures/cholecystectomy/about/pac-20384818#:~:text=A%20cholecystectomy%20(koh%2Dlulh%2D,fluid%20produced%20in%20yo ur%20liver.(last%20visited%20April%206,%202022).)
 25 [20384818#:~:text=A%20cholecystectomy%20\(koh%2Dlulh%2D,fluid%20produced%20in%20yo](https://www.mayoclinic.org/tests-procedures/cholecystectomy/about/pac-20384818#:~:text=A%20cholecystectomy%20(koh%2Dlulh%2D,fluid%20produced%20in%20yo ur%20liver.(last%20visited%20April%206,%202022).)
 26 [ur%20liver.\(last%20visited%20April%206,%202022\).](https://www.mayoclinic.org/tests-procedures/cholecystectomy/about/pac-20384818#:~:text=A%20cholecystectomy%20(koh%2Dlulh%2D,fluid%20produced%20in%20yo ur%20liver.(last%20visited%20April%206,%202022).) Gallbladder surgeries are typically performed to treat
 27 gallstones and the complications they cause. *Id.*

26 ⁴ A hiatal hernia occurs when the upper part of the stomach bulges through the large muscle
 27 separating the abdomen and chest. *See Hiatal hernia: Symptoms and causes*, MAYO CLINIC,
 28 <https://www.mayoclinic.org/diseases-conditions/hiatal-hernia/symptoms-causes/syc-20373379>.
 (last visited April 6, 2022). A large hiatal hernia can allow food and acid back into the
 esophagus, leading to heartburn. *Id.* Surgery can repair a hiatal hernia. *See Hiatal hernia:*

1 improvement. (AR 75). Plaintiff continued to complain of dysphagia⁵ and upper abdominal pain
2 after surgery. (AR 75) And while the ALJ stated that Plaintiff's complaints changed in January
3 2020, the ALJ did not explain how those complaints changed other than stating that Plaintiff
4 "reported ongoing reflux, unresolved by the hiatal hernia repair surgery." (AR 75). Plaintiff was
5 eventually referred to his surgeon to address esophageal dysphagia.⁶ (AR 76). Regarding
6 Plaintiff's complaints of neck and low back pain, the ALJ described that Plaintiff made objective
7 improvements with physical therapy. (AR 76). But she added that Plaintiff was prescribed three
8 medications and received periodic injections without explaining whether these medications
9 helped Plaintiff's pain. (AR 76). Instead, she only stated that Plaintiff never underwent surgery
10 or consulted with a spine surgeon. (AR 76).

11 The Court is also not convinced by the Commissioner's argument that the ALJ's finding
12 that Drs. Barton and Blaskowski's opinions were unpersuasive constituted a clear and convincing
13 reason for rejecting Plaintiff's pain testimony. While the ALJ found the opinions unpersuasive, it
14 was because "[n]ew and significant evidence received at the hearing level shows the claimant is
15 more limited than determined by Drs. Barton and Blaskowski." (AR 77). The ALJ did not
16 otherwise connect these prior opinions with Plaintiff's subjective complaints. Remand is
17 appropriate for the ALJ to consider Plaintiff's subjective symptom testimony in assessing the
18 RFC.

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23 *Diagnosis and treatment*, MAYO CLINIC, <https://www.mayoclinic.org/diseases-conditions/hiatal-hernia/diagnosis-treatment/drc-20373385>. (last visited April 6, 2022).

24 ⁵ Dysphagia is difficulty swallowing. *See Dysphagia: Symptoms and causes*, MAYO CLINIC,
25 <https://www.mayoclinic.org/diseases-conditions/dysphagia/symptoms-causes/syc-20372028>. (last
visited April 6, 2022).

26 ⁶ Esophageal dysphagia refers to the sensation of food sticking or getting caught in the base of the
27 throat or in the chest after starting to swallow. *See Dysphagia: Symptoms and causes*, MAYO
28 CLINIC, <https://www.mayoclinic.org/diseases-conditions/dysphagia/symptoms-causes/syc-20372028>. (last visited April 6, 2022).

1 **IT IS THEREFORE ORDERED** that Plaintiff's motion for remand (ECF No. 20) is
2 **granted.** This matter is remanded for further proceedings consistent with this order.

3 **IT IS FURTHER ORDERED** that the Commissioner's cross motion to affirm (ECF
4 No. 21) is **denied.** The Clerk of Court is kindly directed to enter judgment accordingly and close
5 this case.

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7 DATED: April 8, 2022

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10 DANIEL J. ALBREGTS
11 UNITED STATES MAGISTRATE JUDGE
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